FILE COPY

FILED
OCT 7 1940
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,
Petitioner,

vs.

RUBERT HERMANOS, INC.
Respondent.

REPLY BRIEF FOR PETITIONER

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico,

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,

MIGUEL GUERRA MONDRAGON,

RAFAEL RIVERA ZAYAS,
Of Counsel.

Rufus H. Darby Printing Co., Washington, D. C.

SUBJECT-INDEX

Page

I.—The decision of the Supreme Court of Puerto Rico was based in part on this corporation's violations of local law 1-3

II.—The Joint Resolution of Congress of May 1, 1900, is directly binding upon the corporations themselves as well as upon the Legislature and the entire Insular Government 3-6

III.—Respondent ignores the accepted doctrine that every corporation chartered under any general State or Territorial corporation law must be regarded as having embodied in its charter the provisions and limitations of the statutes and Constitution under which the corporation is organized 6-7

IV.—Statutory provisions 7-8, and Appendix, 9-13

Conclusion 8

APPENDICES

Appendix I: Statutory provisions Appendix, 9-13

Appendix II: English translation of statement appearing in "El Mundo", a newspaper of San Juan, Puerto Rico, at the time of the enactment of Act No. 33 Appendix, 14

TABLE OF CASES

Arkansas Stave Co. vs. State, 94 Ark. 27 6

Freeport Water Co. vs. Freeport City, 180 U. S. 587 6

Hamilton Gas Light and Coke Co. vs. Hamilton City, 146 U. S. 258 6

People vs. Chicago Gas Trust Co., 130 Ill. 268 6

Peters vs. United States Mortgage Co., 13 Del. Ch. 11 6

Pioneer Telephone and Telegraph Co. vs. State, 38 Okla. 554 6

STATUTES

	Page
CONSTITUTION	
Art. IV, Sec. 3, cl. 2	4
Art. VI, Sec. 2	4
FEDERAL	
Former Organic Act for Puerto Rico, "Foraker Act", April 12, 1900	
Secs. 18 and 26	Appendix, 9
Sec. 27	Appendix, 9-10
Secs. 28 and 30	Appendix, 10
Sec. 31	Appendix, 10-11
Sec. 32	Appendix, 11
Organic Act for Puerto Rico, "Jones Law", March 2, 1917	
Sec. 34	6
Sec. 38	Appendix, 11-12
Sec. 39	7, and Appendix, 12
Joint Resolution of Congress, No. 23, May 1, 1900 31 Stat. 716	3, 6
PUERTO RICO	
Quo Warranto Law of March 1, 1902, Sec. 2	3
Act No. 11, approved March 6, 1913, amending Article 353(a) of Political Code	8, and Appendix 12-13
Act No. 33, approved July 22, 1935	4, 6
Act No. 47, approved August 7, 1935	6
CORPORATION LAWS:	
Act of March 1, 1902	2
Act of March 9, 1911	2, 5
Secs. 1 and 2	2
Sec. 3, Par. 4	2, 5
Par. 8	3
Sec. 4	3

OTHER AUTHORITIES

"Statement of the Managers on the Part of the House" Conference Report on J. R. No. 23, May 1, 1900 (Cong. Rec., Vol. 54, p. 4166; 64th Congress, 2nd Sess.) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 582

THE PEOPLE OF PUERTO RICO,

Petitioner,

vs.

RUBERT HERMANOS, INC.,

Respondent.

REPLY BRIEF FOR PETITIONER

I

The decision of the Supreme Court of Puerto Rico was based in part on this corporation's violations of local law.

Respondent says (*Brief*, p. 5):

> "In the brief filed by the Petitioner as appellee in the Circuit Court of Appeals, the theory that the proceeding was in part based upon the violation of any statute of Puerto Rico was for the first time suggested, and the claim for the first time advanced that the allegations contained in the Information were susceptible of such a construction."

This is substantially a restatement of what respondent said in its "Brief in Opposition" (pp. 5-6) to the Petition for Certiorari. *It is plainly incorrect*, as was pointed out in our "Reply Brief for Petitioner In Reply to Respondent's Brief in Opposition" (pp. 8-10).

A. (1) The record shows that the Supreme Court of Puerto Rico *did specifically* base its judgment in part upon its finding (R. 304, 305),

> "that the defendant corporation Rubert Hermanos, Inc., is engaged in agriculture and is guilty of owning and controlling 12,188 acres of land *in violation of * * * its own articles of incorporation*, by all of which provisions the said defendant corporation is expressly limited and restricted to the ownership and control of lands not in excess of 500 acres";

and (2) The Circuit Court of Appeals itself finds [*Majority Opinion*, R. 327] that: "*The judgment of the insular Supreme Court was based in part on these allegations*" that the "*local law of Puerto Rico had been violated*"[1].

B. Plainly, the insular Supreme Court's finding that this corporation's holding of 12,188 acres of land was "*in violation of * * its own articles of incorporation*" was *necessarily a finding of its violation of the local laws.* The local corporation law of March 1, 1902,[2] reenacted without change in this respect in 1911, and in force ever since,[3] states (Secs. 1 and 2) for what objects private corporations may be organized, and (Sec. 3) their powers, with the *proviso*, however (Sec. 3, Par. 4),

> "That the power of any agricultural corporation organized under this Act to hold real estate shall be subject to the prohibition contained in section three of the joint resolution of the Congress of the United States of May first, nineteen hundred";

---

[1] But the Circuit Court proceeds to hold (R. 329) that the allegation of violation of the local law was "too indefinite" and to overrule the local Supreme Court on that ground. [*Brief for Petitioner*, pp. 49-55.]

[2] Twenty-five years before this corporation's organization in 1927.

[3] Brief for Petitioner, Appendix, pp. 74-78.

that every corporation may (Sec. 3, Par. 8) "*possess and exercise, subject to the restrictions* and liabilities *contained in this act and in* the Civil Code *and its articles of incorporation* such incidental powers as are necessary or convenient to the attainment of the object or objects set forth in such articles of incorporation: *Provided*, That the same are *not inappropriate to or inconsistent with such articles of incorporation* * * *"; and further that (Sec. 4):

> "No corporation formed under this act shall be deemed to possess or shall exercise corporate powers except in accordance with the provisions of the preceding section."

Necessarily, therefore, the insular Supreme Court's finding that this corporation "engaged in agriculture" was, holding this great tract of land, "in violation of * * * its own Articles of Incorporation", was a direct finding of its violation of this local corporation law under which it was organized.

And the local *quo warranto* law, from its first enactment on March 1, 1902 (the same date as the enactment of the local corporation law) has carried the provision:[4]

> "Sec. 2. That in case * * any corporation * * * * * exercises rights not conferred by law",

it is liable to *quo warranto* proceedings for its dissolution.

II

***The Joint Resolution* of Congress of May 1, 1900, *is directly binding upon the corporations themselves* as well as upon the Legislature and the entire Insular Government.**

As said in our original "Brief for Petitioner" [Point V, p. 28], it is "an expression of the public policy of the

[4] Brief for Petitioner, Appendix, p. 72; provision re-enacted in Act No. 47 of August 7, 1935, Sec. 2, Brief for Petitioner, Appendix, p. 79.

United States, and of the intent of the Congress that it should become a fixed rule of property in the Island, and a part of the basic law of the land there".

Respondent now says (*Brief*, p. 14; *and see also* p. 17):

> "The Joint Resolution of May 1, 1900, which is continued in force or incorporated in the present Organic Act of Puerto Rico, in and by Section 39 of that act, was *not addressed to corporations, nor did it contain provisions which corporations could violate.*" (*Italics supplied.*)

A. This is substantially a restatement of what respondent said on page 11 of its Brief in Opposition; and, as we pointed out in our Reply Brief (pp. 10-12) to the Brief in Opposition, counsel for respondent are here echoing what the Court of Appeals said in its majority opinion (R. 325) as to Act No. 33 of the Legislature of Puerto Rico "converting" the Joint Resolution of Congress "into a limitation on the powers of corporations".

B. But, as we pointed out in our reply to the Brief in Opposition:

C. **Neither the Circuit Court's opinion nor the respondent cites any authority** for this bald statement of the supposed limited character of this Act of Congress, the Joint Resolution of May 1, 1900. *The contention is clearly erroneous.*

D. Joint Resolution No. 23, of May 1, 1900, like every other Act of Congress relating to the Territories, was enacted in the exercise of the plenary power of the Congress under Article IV, Section 3, clause 2 of the Constitution: and is the "supreme Law of the Land" in the Island (Const., Art. VI, Sec. 2[5]), binding directly, of its own force, not only on the Legislature, but likewise on every other branch of the insular government, and necessarily entering into and forming a part of every act of the Legis-

[5] Brief for Petitioner, p. 20.

lature. It therefore necessarily, of its own force, automatically entered into and became a part of the local Corporation Law enacted by the Legislature, and likewise of the articles of incorporation of every corporation chartered under that law, or under any authority from the Legislature,—and hence, of the Articles of Incorporation of this respondent company,—**even aside from the express adoption of it by the Legislature in the *proviso* to Paragraph 4 of Section 3 of the Corporation Law** (*Brief for Petitioner*, p. 33, *and Appendix*, p. 75).

E. *The wording of the Joint Resolution itself* [J. R. No. 23, Sec. 3, 31 Stat. 715, 716] *indicates that it is intended to be addressed*, not only to the Legislature, or to the Legislature alone, but likewise, like every public law, to the entire insular government and to the public generally, and *particularly to the corporations themselves.* It says:

(a) "That all franchises * * * shall provide that the same shall be subject to amendment, alteration, or repeal".

(b) "* * * shall forbid the issue of stock or bonds, except in exchange for actual cash, * * *".

(c) "No corporation shall be authorized to conduct the business of buying and selling real estate".

(d) "No corporation shall * * * be permitted to hold or own real estate except * * *,"

(e) "and every corporation hereafter authorized to engage in agriculture shall by its charter be restricted to the ownership and control of not to exceed five hundred acres of land";

(f) "and this provision shall be held to prevent any member of a corporation engaged in agriculture from being in any wise interested in any other corporation engaged in agriculture."

(g) "Corporations, however, may loan funds upon real estate security, and purchase real estate when necessary for the collection of loans, but

they shall dispose of real estate so obtained within five years after receiving the title".

(h) "Corporations not organized in Porto Rico, and doing business therein, shall be bound by the provisions of this section so far as they are applicable".

III

Respondent ignores the accepted doctrine that every corporation chartered under any general State or Territorial corporation law necessarily must be regarded as having embodied in its charter the provisions and limitations of the statutes and Constitution under which the corporation is organized.

A. The respondent contends that the Joint Resolution constitutes a limitation of the powers of the territorial legislature but not of corporations organized under the laws of the Territory. From this premise, respondent argues that Acts Nos. 33 and 47 are invalid either because (a) they unlawfully amend the Joint Resolution by converting it into a limitation on the powers of corporations or (b) they "extend" or incorporate its provisions into local law as a limitation on the powers of corporations without publishing the provisions in full, in violation of Section 34 of the Organic Act. (*Brief*, p. 54.) The premise and the conclusions are both unsound.

The respondent ignores the accepted doctrine that, even without express incorporation, every corporate charter necessarily embodies the provisions of the general incorporation law and the constitution of the grantor regarding the terms and conditions under which corporations may be organized, *Hamilton Gas Light and Coke Co.* v. *Hamilton City*, 146 U. S. 258, 269-270; *Freeport Water Co.* v. *Freeport City*, 180 U. S. 587, 594, 596; *People* v. *Chicago Gas Trust Co.*, 130 Ill. 268; *Arkansas Stave Co.* v. *State*, 94 Ark. 27, 32; *Peters* v. *United States Mortgage Co.*, 13 Del. Ch. 11, 14; *Pioneer Telephone & Telegraph Co.* v. *State*, 38 Okla. 554, 558. "The stream cannot rise higher than its source".

B. Indicating the opinion of the members of Congress themselves at the time of the reenactment of this Joint Resolution in 1917 when it was embodied in Section 39 of the present Organic Act for Puerto Rico [*Brief for Petitioner, Appendix*, p. 71], that it operated as a direct limitation on the powers of the corporations themselves, the **"Statement of the Managers on the Part of the House"** upon the Conference Report on the bill, said (Cong. Rec., Vol. 54, p. 4166; 64th Congress, 2nd Sess.):

> "Senate amendment No. 75, page 44, is agreed to with amendment. It provides that nothing in this act shall be construed as abrogating or in any way changing section three of a joint resolution approved May 1, 1900, with respect to real estate holdings, and directs the Governor of Porto Rico to have made and submitted to the next regular session of Congress a report of all the real estate used for the purpose of agriculture and held either directly or indirectly by corporations, partnerships, or indiyiduals. The managers on the part of the House, believing that the report required in this amendment would entail a large amount of work and considerable cost upon the government of Porto Rico, and that every reasonable purpose and object to be attained can be accomplished by limiting the report to holdings in excess of 500 acres **(since subsequent to the enactment of the joint resolution of Congress referred to, no corporation engaged in agriculture could secure a charter which did not restrict it to the ownership and control of not to exceed 500 acres of land)**, have insisted upon such limitation. The Senate conferees have agreed to this limitation. There are now some 55,000 holdings of agricultural lands in Porto Rico the vast majority of which are of small acreage." (*Emphasis supplied.*)

IV

Statutory provisions.

There are in Appendix I (*infra*, pp. 9-13) pertinent sections of the former Organic Act for Puerto Rico, the "Foraker Act", and of the present Organic Act, addi-

tional to those in the Appendix to our original "Brief for Petitioner"; and also Puerto Rican Act No. 11 of 1913, amending Article 353(2) of the Political Code, so as to restrict the powers of foreign corporations doing business in the Island to such "as a domestic corporation of like character" could exercise.

Appendix II, *infra*, p. 14, contains an English translation of a contemporary statement by the author of the bill in the Senate of Puerto Rico, published in "EL MUNDO", of San Juan, February 12, 1935, of the purpose of Act No. 33 of 1935, here in question.

CONCLUSION

As stated in the "Conclusion" of our "Brief for Petitioner" (p. 65), the decision of the Supreme Court of Puerto Rico, and its judgment in this case, was right and should be affirmed; that of the Circuit Court of Appeals entered on the majority opinion of JUDGES WILSON and MAHONEY reversing the judgment of the insular Supreme Court, over the dissenting opinion of JUDGE PETERS, was wrong, and should be reversed.

WILLIAM CATTRON RIGBY,
Attorney for Petitioner.

GEORGE A. MALCOLM,
Attorney General of Puerto Rico.

NATHAN R. MARGOLD,
Solicitor for the Department of the Interior,

MIGUEL GUERRA MONDRAGON,
RAFAEL RIVERA ZAYAS,
Of Counsel.

APPENDIX

APPENDIX I

STATUTORY PROVISIONS

FEDERAL

The former Organic Act, "Foraker Act", approved April 12, 1900, c. 191, 31 Stat. 77 *et seq.*

Section 18.—That there shall be appointed by the President, by and with the advice and consent of the Senate, for a period of four years, unless sooner removed by the President, a Secretary, an Attorney-General, a Treasurer, an Auditor, a Commissioner of the Interior, and a Commissioner of Education, each of whom shall reside in Porto Rico during his official incumbency and have the powers and duties hereinafter provided for them, respectively, and who, together with five other persons of good repute, to be also appointed by the President for a like term of four years, by and with the advice and consent of the Senate, shall constitute an Executive Council, at least five of whom shall be native inhabitants of Porto Rico, and, in addition to the legislative duties hereinafter imposed upon them as a body, shall exercise such powers and perform such duties as are hereinafter provided for them, respectively, and who shall have power to employ all necessary deputies and assistants for the proper discharge of their duties as such officials and as such Executive Council.

Section 26.—That the other five members of the Executive Council, to be appointed as hereinbefore provided, shall attend all meetings of the Executive Council and participate in all business of every character that may be transacted by it; and they shall receive as compensation for their services such annual salaries as may be provided by the Legislative Assembly.

Sec. 27.—That all local legislative powers hereby granted shall be vested in a Legislative Assembly which shall consist of two Houses; one the Executive Council, as hereinbefore constituted, and the other a House of Delegates, to consist of thirty-

five members elected biennially by the qualified voters as hereinafter provided; and the two Houses thus constituted shall be designated "The Legislative Assembly of Porto Rico".

Section 28.—That for the purposes of such elections Porto Rico shall be divided by the Executive Council into seven districts, composed of contiguous territory and as nearly equal as may be in population, and each district shall be entitled to five members of the House of Delegates.

Section 30.—That the House of Delegates shall be the sole judge of the elections, returns and qualifications of its members, and shall have and exercise all the powers with respect to the conduct of its proceedings that usually appertain to parliamentary legislative bodies. No person shall be eligible to membership in the House of Delegates who is not twenty-five years of age and able to read and write either the Spanish or the English language, or who is not possessed in his own right of taxable property, real or personal, situated in Porto Rico.

Sec. 31.—That all bills may originate in either House, but no bill shall become a law unless it be passed in each House by a majority vote of all the members belonging to such House and be approved by the Governor within ten days thereafter. If, when a bill that has been passed is presented to the Governor for signature, he approves the same, he shall sign it, or if not he shall return it, with his objections, to that House in which it originated, which House shall enter his objections at large on its journal and proceed to reconsider the bill. If, after such consideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be considered, and if approved by two-thirds of that House it shall become a law. But in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be en-

tered upon the journal of each House respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislative Assembly by adjournment prevent its return, in which case it shall not be a law; *Provided, however*, That all laws enacted by the Legislative Assembly shall be reported to the Congress of the United States, which hereby reserves the power and authority, if deemed advisable, to annul the same.

Section 32.—That the legislative authority herein provided shall extend to all matters of a legislative character not locally inapplicable, including power to create, consolidate, and reorganize the municipalities, so far as may be necessary, and to provide and repeal laws and ordinances therefor; and also the power to alter, amend, modify, and repeal any and all laws and ordinances of every character now in force in Porto Rico, or any municipality or district thereof, not inconsistent with the provisions hereof; *Provided, however*, That all grants of franchises, rights, and privileges or concessions of a public or quasi-public nature shall be made by the Executive Council, with the approval of the Governor, and all franchises granted in Porto Rico shall be reported to Congress, which hereby reserves the power to annul or modify the same.

The present Organic Act for Puerto Rico, the "Jones Law", Act of March 2, 1917, c. 145, 39 Stat. 951 *et seq.*

Sec. 38.—That all grants of franchises, rights, and privileges of a public or quasi public nature shall be made by a public-service commission, consisting of the heads of executive departments, the auditor, and two commissioners to be elected by the qualified voters at the first general election to be held under this Act, and at each subsequent general election thereafter. The terms of said elective commissioners elected at the first general election shall commence on the twenty-eighth day following the said general election, and the terms of the said elective commis-

sioners elected at each subsequent general election shall commence on the second day of January following their election; they shall serve for four years and until their successors are elected and qualified. Their compensation shall be * * *. The said commission is also empowered and directed to discharge all the executive functions relating to public-service corporations heretofore conferred by law upon the executive council. Franchises, rights, and privileges granted by said commission shall be reported to Congress, which hereby reserves the power to annul or modify the same.

Sec. 39. [1st Par.]—That all grants of franchises and privileges under the section last preceding shall provide that the same shall be subject to amendment, alteration, or repeal, and shall forbid the issue of stocks or bonds except in exchange for actual cash or property at a fair valuation to be determined by the public-service commission equal in amount to the par value of the stocks or bonds issued, and shall forbid the declaring of stock or bond dividends, and in the case of public-service corporations shall provide for the effective regulation of charges thereof and for the purchase or taking of their property by the authorities at a fair and reasonable valuation.

[**Memo.** The 2nd Paragraph of this Section 39 already appears in the Appendix [p. 40] to our "Brief for Petitioner" here.]

Act No. 11, approved March 6, 1913; Laws of Puerto Rico, 1913, pp. 55-56.

To amend section 353, paragraph 2, of the Political Code, so as to impose upon foreign corporations the same legal restrictions as are imposed upon domestic corporations, and to provide for the prevention of their engaging in business without proper registration and license.

Be it enacted by the Legislative Assembly of Porto Rico:

Section 1.—That paragraph 2 of section 353 of the Political Code is hereby amended so as to read as follows:

"(Paragraph 2.)—It shall be unlawful for any corporation, joint stock or limited-liability company or association, not incorporated under the laws of Porto Rico, except associations not for pecuniary profit, to do business therein until such corporation, company or association shall have secured from the Treasury of Porto Rico a formal license to transact business therein; and no such license shall be issued by said Treasurer until such corporation, company or association shall have paid the license fee hereinafter specified and shall have deposited with said Treasurer a certificate under seal from the Secretary of Porto Rico showing that it has filed in the office of the Secretary an authentic copy of its charter and the statement and certificate of consent required by law; *Provided*, That a foreign corporation can only transact such business or exercise such powers as a domestic corporation of like character transacts or exercises in Porto Rico, and to such extent as the latter may be authorized under the local laws, and the license issued by the Treasurer of Porto Rico shall set forth this restriction in the context thereof: *And provided, further*, That it shall be the duty of the Treasurer of Porto Rico to report to the Attorney General, for proper action under the provisions of section 40 of the Private Corporations Act, any foreign corporation which is doing business in Porto Rico without having complied with the requirements prescribed by the local laws and secured from him a license. For such a purpose, the Treasurer shall take such action as may be necessary to secure information in every case in which a foreign corporation is doing business in this island without the legal authorization so to do."

Section 2.—That all laws or parts of laws in conflict with this Act are hereby repealed.

Section 3.—That this Act shall take effect upon its approval.

APPENDIX II

English translation of statement made by the author of the bill, published in "El Mundo", San Juan, February 12, 1935, of the purpose of Act No. 33 of 1935.

"MUNOZ MARIN EXPLAINS THE SCOPE OF FOUR BILLS WHICH HE INTRODUCED YESTERDAY.

"Liberal Senator Munoz Marin gave out the following statements yesterday:

'Upon the convening of the Senate I introduced four bills which I consider to be of great importance. * * . I believe I ought to give the public the full text of those bills and explain their character and scope.

'* * * * *

'As to the fourth bill giving original jurisdiction to the Supreme Court of Puerto Rico in *quo warranto* cases relating to the 500-acre law of Congress, its intent is to accelerate the proceedings the Government may start to enforce the law. All *quo warranto* cases in this regard will perforce reach the Supreme Court after the loss of many months in the District Courts. It is desired to save this loss of time in the economic reconstruction of Puerto Ricans.'"